

**Senator Allen M. Christensen** proposes the following substitute bill:

**ELECTRONIC CIGARETTE AND OTHER NICOTINE**

**PRODUCT AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill enacts and amends provisions relating to electronic cigarette products and other nicotine products.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ implements permitting requirements and processes for the sale of an alternative nicotine product or a nontherapeutic nicotine product;
- ▶ requires a tobacco retailer to provide itemized receipts and to maintain an itemized transaction log for sales of a tobacco product, an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product;
- ▶ applies civil penalties to the improper sale of an alternative nicotine product or a nontherapeutic nicotine product;
- ▶ requires certain other nicotine products that contain nicotine to have a statement on the exterior package that the product contains nicotine;
- ▶ imposes licensing and bonding requirements on a person that sells or distributes an alternative nicotine product or a nontherapeutic nicotine product;



- 26           ▶ imposes an excise tax on the sale of an electronic cigarette substance, a prefilled
- 27 electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device
- 28 substance, and a prefilled nontherapeutic nicotine device in the state;
- 29           ▶ provides for the remittance of the tax collected;
- 30           ▶ creates the Electronic Cigarette Substance and Other Nicotine Product Tax
- 31 Restricted Account;
- 32           ▶ addresses use of revenue from the taxation of an electronic cigarette substance, a
- 33 prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic
- 34 nicotine device substance, and a prefilled nontherapeutic nicotine device;
- 35           ▶ provides criminal penalties for a sale or purchase of an electronic cigarette product,
- 36 an alternative nicotine product, or a nontherapeutic nicotine product, in violation of
- 37 law;
- 38           ▶ prohibits a manufacturer, wholesaler, or retailer from providing certain discounts or
- 39 giveaways for electronic cigarettes; and
- 40           ▶ makes technical and conforming changes.

41 **Money Appropriated in this Bill:**

42           None

43 **Other Special Clauses:**

44           This bill provides a special effective date.

45 **Utah Code Sections Affected:**

46 AMENDS:

- 47           **10-8-41.6**, as last amended by Laws of Utah 2018, Chapter 231
- 48           **17-50-333**, as last amended by Laws of Utah 2018, Chapter 231
- 49           **26-57-101**, as enacted by Laws of Utah 2015, Chapter 132
- 50           **26-57-102**, as enacted by Laws of Utah 2015, Chapter 132
- 51           **26-62-101**, as enacted by Laws of Utah 2018, Chapter 231
- 52           **26-62-102**, as renumbered and amended by Laws of Utah 2018, Chapter 231
- 53           **26-62-201**, as enacted by Laws of Utah 2018, Chapter 231
- 54           **26-62-202**, as enacted by Laws of Utah 2018, Chapter 231
- 55           **26-62-301**, as enacted by Laws of Utah 2018, Chapter 231
- 56           **26-62-304**, as renumbered and amended by Laws of Utah 2018, Chapter 231

- 57            [26-62-305](#), as renumbered and amended by Laws of Utah 2018, Chapter 231
- 58            [26-62-306](#), as renumbered and amended by Laws of Utah 2018, Chapter 231
- 59            [26A-1-128](#), as enacted by Laws of Utah 2018, Chapter 231
- 60            [59-14-102](#), as last amended by Laws of Utah 2013, Chapter 148
- 61            [59-14-201](#), as last amended by Laws of Utah 2018, Chapter 231
- 62            [59-14-801](#), as enacted by Laws of Utah 2015, Chapter 132
- 63            [59-14-802](#), as enacted by Laws of Utah 2015, Chapter 132
- 64            [59-14-803](#), as last amended by Laws of Utah 2018, Chapter 231
- 65            [76-10-101](#), as last amended by Laws of Utah 2015, Chapters 66, 132 and last amended
- 66 by Coordination Clause, Laws of Utah 2015, Chapter 132
- 67            [76-10-104](#), as last amended by Laws of Utah 2010, Chapter 114
- 68            [76-10-104.1](#), as last amended by Laws of Utah 2013, Chapter 278
- 69            [76-10-105](#), as last amended by Laws of Utah 2018, Chapter 415
- 70            [76-10-105.1](#), as last amended by Laws of Utah 2018, Chapter 231
- 71            [76-10-111](#), as last amended by Laws of Utah 2010, Chapter 114

72 ENACTS:

- 73            [26-57-104](#), Utah Code Annotated 1953
- 74            [26-62-206](#), Utah Code Annotated 1953
- 75            [59-14-804](#), Utah Code Annotated 1953
- 76            [59-14-805](#), Utah Code Annotated 1953
- 77            [59-14-806](#), Utah Code Annotated 1953
- 78            [59-14-807](#), Utah Code Annotated 1953



80 *Be it enacted by the Legislature of the state of Utah:*

81            Section 1. Section **10-8-41.6** is amended to read:

82            **10-8-41.6. Regulation of retail tobacco specialty business.**

83            (1) As used in this section:

84            (a) "Alternative nicotine product" means the same as that term is defined in Section  
85 [59-14-102](#).

86            ~~(a)~~ (b) "Community location" means:

87            (i) a public or private kindergarten, elementary, middle, junior high, or high school;

- 88 (ii) a licensed child-care facility or preschool;
- 89 (iii) a trade or technical school;
- 90 (iv) a church;
- 91 (v) a public library;
- 92 (vi) a public playground;
- 93 (vii) a public park;
- 94 (viii) a youth center or other space used primarily for youth oriented activities;
- 95 (ix) a public recreational facility;
- 96 (x) a public arcade; or
- 97 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 98 ~~[(b)]~~ (c) "Department" means the Department of Health, created in Section [26-1-4](#).
- 99 (d) "Electronic cigarette product" means the same as that term is defined in Section
- 100 [59-14-102](#).
- 101 ~~[(c)]~~ (e) "Local health department" means the same as that term is defined in Section
- 102 [26A-1-102](#).
- 103 (f) "Nontherapeutic nicotine product" means the same as that term is defined in Section
- 104 [59-14-102](#).
- 105 ~~[(d)]~~ (g) "Permittee" means a person licensed under this section to conduct business as
- 106 a retail tobacco specialty business.
- 107 ~~[(e)]~~ (h) "Retail tobacco specialty business" means a commercial establishment in
- 108 which:
- 109 (i) the sale of tobacco products, electronic cigarette products, alternative nicotine
- 110 products, and nontherapeutic nicotine products accounts for more than 35% of the total
- 111 quarterly gross receipts for the establishment;
- 112 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 113 storage of tobacco products, electronic cigarette products, alternative nicotine products, and
- 114 nontherapeutic nicotine products;
- 115 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
- 116 tobacco products, electronic cigarette products, alternative nicotine products, and
- 117 nontherapeutic nicotine products; or
- 118 (iv) the retail space features a self-service display for tobacco products, electronic

119 cigarette products, alternative nicotine products, and nontherapeutic nicotine products.

120 [(f)] (i) "Self-service display" means the same as that term is defined in Section  
121 76-10-105.1.

122 [(g)] (j) "Tobacco product" means:

123 (i) any cigar[;] or cigarette, [~~or electronic cigarette,~~] as those terms are defined in  
124 Section 76-10-101;

125 (ii) a tobacco product, as that term is defined in Section 59-14-102, including:

126 (A) chewing tobacco; or

127 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;

128 and

129 (iii) tobacco paraphernalia, as that term is defined in Section 76-10-104.1.

130 (2) The regulation of a retail tobacco specialty business is an exercise of the police  
131 powers of the state, and through delegation, to other governmental entities.

132 (3) (a) A person may not operate a retail tobacco specialty business in a municipality  
133 unless the person obtains a license from the municipality in which the retail tobacco specialty  
134 business is located.

135 (b) A municipality may only issue a retail tobacco specialty business license to a  
136 person if the person complies with the provisions of Subsections (4) and (5).

137 (4) (a) Except as provided in Subsection (7), a municipality may not issue a license for  
138 a person to conduct business as a retail tobacco specialty business if the retail tobacco specialty  
139 business is located within:

140 (i) 1,000 feet of a community location;

141 (ii) 600 feet of another retail tobacco specialty business; or

142 (iii) 600 feet from property used or zoned for:

143 (A) agriculture use; or

144 (B) residential use.

145 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in  
146 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest  
147 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard  
148 to intervening structures or zoning districts.

149 (5) (a) Except as provided in Subsection (5)(b), beginning July 1, 2018, a municipality

150 may not issue or renew a license for a person to conduct business as a retail tobacco specialty  
151 business until the person provides the municipality with proof that the retail tobacco specialty  
152 business has:

153 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter  
154 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit, by the local  
155 health department having jurisdiction over the area in which the retail tobacco specialty  
156 business is located; and

157 (ii) (A) a valid license to sell [~~tobacco products from~~] a tobacco product issued by the  
158 State Tax Commission in accordance with Section 59-14-201 or 59-14-301; or

159 (B) a valid license to sell an electronic cigarette product, an alternative nicotine  
160 product, or a nontherapeutic nicotine product issued by the State Tax Commission in  
161 accordance with Section 59-14-803.

162 (b) A person that was licensed to conduct business as a retail tobacco specialty  
163 business in a municipality before July 1, 2018, shall obtain a permit from a local health  
164 department under Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine  
165 Product Retail Permit, on or before January 1, 2019.

166 (6) (a) Nothing in this section:

167 (i) requires a municipality to issue a retail tobacco specialty business license; or

168 (ii) prohibits a municipality from adopting more restrictive requirements on a person  
169 seeking a license or renewal of a license to conduct business as a retail tobacco specialty  
170 business.

171 (b) A municipality may suspend or revoke a retail tobacco specialty business license  
172 issued under this section:

173 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,  
174 Part 16, Pattern of Unlawful Activity Act;

175 (ii) if a licensee violates the regulations restricting the sale and distribution of  
176 cigarettes and smokeless tobacco to protect children and adolescents issued by the United  
177 States Food and Drug Administration, 21 C.F.R. Part 1140;

178 (iii) upon the recommendation of the department or a local health department under  
179 Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit;  
180 or

181 (iv) under any other provision of state law or local ordinance.

182 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has  
183 a business license and is operating in a municipality in accordance with all applicable laws  
184 except for the requirement in Subsection (4), on or before December 31, 2015, is exempt from  
185 Subsection (4).

186 (b) A retail tobacco specialty business may maintain an exemption under Subsection  
187 (7)(a) if:

188 (i) the retail tobacco specialty business license is renewed continuously without lapse  
189 or permanent revocation;

190 (ii) the retail tobacco specialty business does not close for business or otherwise  
191 suspend the sale of tobacco products, electronic cigarette products, alternative nicotine  
192 products, and nontherapeutic nicotine products for more than 60 consecutive days;

193 (iii) the retail tobacco specialty business does not substantially change the business  
194 premises or business operation; and

195 (iv) the retail tobacco specialty business maintains the right to operate under the terms  
196 of other applicable laws, including:

197 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;

198 (B) zoning ordinances;

199 (C) building codes; and

200 (D) the requirements of a retail tobacco specialty business license issued before  
201 December 31, 2015.

202 Section 2. Section **17-50-333** is amended to read:

203 **17-50-333. Regulation of retail tobacco specialty business.**

204 (1) As used in this section:

205 (a) "Alternative nicotine product" means the same as that term is defined in Section  
206 59-14-102.

207 [~~(a)~~] (b) "Community location" means:

208 (i) a public or private kindergarten, elementary, middle, junior high, or high school;

209 (ii) a licensed child-care facility or preschool;

210 (iii) a trade or technical school;

211 (iv) a church;

- 212 (v) a public library;
- 213 (vi) a public playground;
- 214 (vii) a public park;
- 215 (viii) a youth center or other space used primarily for youth oriented activities;
- 216 (ix) a public recreational facility;
- 217 (x) a public arcade; or
- 218 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 219 ~~[(b)]~~ (c) "Department" means the Department of Health, created in Section [26-1-4](#).
- 220 (d) "Electronic cigarette product" means the same as that term is defined in Section
- 221 [59-14-102](#).
- 222 ~~[(e)]~~ (e) "Licensee" means a person licensed under this section to conduct business as a
- 223 retail tobacco specialty business.
- 224 ~~[(d)]~~ (f) "Local health department" means the same as that term is defined in Section
- 225 [26A-1-102](#).
- 226 (g) "Nontherapeutic nicotine product" means the same as that term is defined in
- 227 Section [59-14-102](#).
- 228 ~~[(e)]~~ (h) "Retail tobacco specialty business" means a commercial establishment in
- 229 which:
- 230 (i) the sale of tobacco products, electronic cigarette products, alternative nicotine
- 231 products, and nontherapeutic nicotine products accounts for more than 35% of the total
- 232 quarterly gross receipts for the establishment;
- 233 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 234 storage of tobacco products, electronic cigarette products, alternative nicotine products, and
- 235 nontherapeutic nicotine products;
- 236 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
- 237 tobacco products, electronic cigarette products, alternative nicotine products, and
- 238 nontherapeutic nicotine products; or
- 239 (iv) the retail space features a self-service display for tobacco products, electronic
- 240 cigarette products, alternative nicotine products, and nontherapeutic nicotine products.
- 241 ~~[(f)]~~ (i) "Self-service display" means the same as that term is defined in Section
- 242 [76-10-105.1](#).

243 [(g)] (j) "Tobacco product" means:

244 (i) any cigar[;] or cigarette, [~~or electronic cigarette~~] as those terms are defined in

245 Section 76-10-101;

246 (ii) a tobacco product, as that term is defined in Section 59-14-102, including:

247 (A) chewing tobacco; or

248 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;

249 and

250 (iii) tobacco paraphernalia, as that term is defined in Section 76-10-104.1.

251 (2) The regulation of a retail tobacco specialty business is an exercise of the police  
252 powers of the state, and through delegation, to other governmental entities.

253 (3) (a) A person may not operate a retail tobacco specialty business in a county unless  
254 the person obtains a license from the county in which the retail tobacco specialty business is  
255 located.

256 (b) A county may only issue a retail tobacco specialty business license to a person if  
257 the person complies with the provisions of Subsections (4) and (5).

258 (4) (a) Except as provided in Subsection (7), a county may not issue a license for a  
259 person to conduct business as a retail tobacco specialty business if the retail tobacco specialty  
260 business is located within:

261 (i) 1,000 feet of a community location;

262 (ii) 600 feet of another retail tobacco specialty business; or

263 (iii) 600 feet from property used or zoned for:

264 (A) agriculture use; or

265 (B) residential use.

266 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in  
267 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest  
268 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard  
269 to intervening structures or zoning districts.

270 (5) (a) Except as provided in Subsection (5)(b), beginning July 1, 2018, a county may  
271 not issue or renew a license for a person to conduct business as a retail tobacco specialty  
272 business until the person provides the county with proof that the retail tobacco specialty  
273 business has:

274 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter  
275 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit, by the local  
276 health department having jurisdiction over the area in which the retail tobacco specialty  
277 business is located; and

278 (ii) (A) a valid license to sell [~~tobacco products from~~] a tobacco product issued by the  
279 State Tax Commission in accordance with Section 59-14-201 or 59-14-301; or

280 (B) a valid license to sell an electronic cigarette product, an alternative nicotine  
281 product, or a nontherapeutic nicotine product issued by the State Tax Commission in  
282 accordance with Section 59-14-803.

283 (b) A person that was licensed to conduct business as a retail tobacco specialty  
284 business in a county before July 1, 2018, shall obtain a permit from a local health department  
285 under Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail  
286 Permit, on or before January 1, 2019.

287 (6) (a) Nothing in this section:

288 (i) requires a county to issue a retail tobacco specialty business license; or

289 (ii) prohibits a county from adopting more restrictive requirements on a person seeking  
290 a license or renewal of a license to conduct business as a retail tobacco specialty business.

291 (b) A county may suspend or revoke a retail tobacco specialty business license issued  
292 under this section:

293 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,  
294 Part 16, Pattern of Unlawful Activity Act;

295 (ii) if a licensee violates the regulations restricting the sale and distribution of  
296 cigarettes and smokeless tobacco to protect children and adolescents issued by the United  
297 States Food and Drug Administration, 21 C.F.R. Part 1140;

298 (iii) upon the recommendation of the department or a local health department under  
299 Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit;  
300 or

301 (iv) under any other provision of state law or local ordinance.

302 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has  
303 a business license and is operating in a county in accordance with all applicable laws except for  
304 the requirement in Subsection (4), on or before December 31, 2015, is exempt from Subsection

305 (4).

306 (b) A retail tobacco specialty business may maintain an exemption under Subsection  
307 (7)(a) if:

308 (i) the retail tobacco specialty business license is renewed continuously without lapse  
309 or permanent revocation;

310 (ii) the retail tobacco specialty business does not close for business or otherwise  
311 suspend the sale of tobacco products, electronic cigarette products, alternative nicotine  
312 products, and nontherapeutic nicotine products for more than 60 consecutive days;

313 (iii) the retail tobacco specialty business does not substantially change the business  
314 premises or business operation; and

315 (iv) the retail tobacco specialty business maintains the right to operate under the terms  
316 of other applicable laws, including:

317 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;

318 (B) zoning ordinances;

319 (C) building codes; and

320 (D) the requirements of a retail tobacco specialty business license issued before  
321 December 31, 2015.

322 Section 3. Section **26-57-101** is amended to read:

323 **CHAPTER 57. ELECTRONIC CIGARETTE AND OTHER NICOTINE PRODUCT**  
324 **REGULATION ACT**

325 **26-57-101. Title.**

326 This chapter is known as the "Electronic Cigarette and Other Nicotine Product  
327 Regulation Act."

328 Section 4. Section **26-57-102** is amended to read:

329 **26-57-102. Definitions.**

330 As used in this chapter:

331 (1) "Alternative nicotine product" means the same as that term is defined in Section  
332 59-14-102.

333 [(†)] (2) "Cigarette" means the same as that term is defined in Section 59-14-102.

334 [(2)] (3) "Electronic cigarette" means the same as that term is defined in Section  
335 [~~59-14-802~~] 59-14-102.

336           ~~[(3)]~~ (4) "Electronic cigarette product" means an electronic cigarette or an electronic  
337 cigarette substance.

338           ~~[(4)]~~ (5) "Electronic cigarette substance" means the same as that term is defined in  
339 Section ~~[59-14-802]~~ 59-14-102.

340           (6) "Local health department" means the same as that term is defined in Section  
341 26A-1-102.

342           ~~[(5)]~~ (7) "Manufacture" includes:

343           (a) to cast, construct, or make electronic cigarettes; or

344           (b) to blend, make, process, or prepare an electronic cigarette substance.

345           ~~[(6)]~~ (8) "Manufacturer sealed electronic cigarette substance" means an electronic  
346 cigarette substance that is sold in a container that:

347           (a) is ~~[pre-filled]~~ prefilled by the electronic cigarette substance manufacturer; and

348           (b) the electronic cigarette manufacturer does not intend for a consumer to open.

349           (9) "Nicotine" means the same as that term is defined in Section 59-14-102.

350           (10) "Nontherapeutic nicotine device" means the same as that term is defined in  
351 Section 59-14-102.

352           Section 5. Section **26-57-104** is enacted to read:

353           **26-57-104. Labeling of other nicotine products containing nicotine.**

354           (1) Any alternative nicotine product or nontherapeutic nicotine device shall contain the  
355 statement described in Subsection (2) if the alternative nicotine product or the nontherapeutic  
356 nicotine device:

357           (a) (i) is not a tobacco product as defined in 21 U.S.C. Sec. 321 and related federal  
358 regulations; or

359           (ii) is not otherwise required to contain a nicotine warning; and

360           (b) contains nicotine.

361           (2) A statement shall appear on the exterior packaging of an alternative nicotine  
362 product or a nontherapeutic nicotine device described in Subsection (1) as follows:

363           "This product contains nicotine."

364           Section 6. Section **26-62-101** is amended to read:

365           **CHAPTER 62. TOBACCO, ELECTRONIC CIGARETTE, AND OTHER**  
366           **NICOTINE PRODUCT RETAIL PERMIT**

367 **26-62-101. Title.**

368 This chapter is known as "Tobacco, Electronic Cigarette, and Other Nicotine Product  
369 Retail Permit."

370 Section 7. Section **26-62-102** is amended to read:

371 **26-62-102. Definitions.**

372 As used in this chapter:

373 (1) "Alternative nicotine product" means the same as that term is defined in Section  
374 59-14-102.

375 ~~[(1)]~~ (2) "Community location" means the same as that term is defined:

376 (a) as it relates to a municipality, in Section 10-8-41.6; and

377 (b) as it relates to a county, in Section 17-50-333.

378 (3) "Electronic cigarette product" means the same as that term is defined in Section  
379 59-14-102.

380 ~~[(2)]~~ (4) "Employee" means an employee of a tobacco retailer.

381 ~~[(3)]~~ (5) "Enforcing agency" means the state Department of Health~~;~~ or any local  
382 health department enforcing the provisions of this chapter.

383 ~~[(4)]~~ (6) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco  
384 specialty business.

385 ~~[(5)]~~ (7) "Local health department" means the same as that term is defined in Section  
386 26A-1-102.

387 (8) "Nontherapeutic nicotine product" means the same as that term is defined in  
388 Section 59-14-102.

389 ~~[(6)]~~ (9) "Permit" means a tobacco retail permit issued under this chapter.

390 ~~[(7)]~~ (10) "Retail tobacco specialty business" means the same as that term is defined:

391 (a) as it relates to a municipality, in Section 10-8-41.6; and

392 (b) as it relates to a county, in Section 17-50-333.

393 ~~[(8)]~~ (11) "Tax commission license" means a license issued by the State Tax  
394 Commission under:

395 (a) Section 59-14-201 to sell cigarettes at retail;

396 (b) Section 59-14-301 to sell ~~[tobacco products]~~ a tobacco product, as that term is  
397 defined in Section 59-14-102, at retail; or

398 (c) Section [59-14-803](#) to sell an electronic cigarette product, an alternative nicotine  
399 product, or a nontherapeutic nicotine product.

400 [~~9~~] (12) "Tobacco product" means:

401 (a) a cigar[;] or cigarette, [~~or electronic cigarette~~] as those terms are defined in Section  
402 [76-10-101](#);

403 (b) a tobacco product, as that term is defined in Section [59-14-102](#), including:

404 (i) chewing tobacco; or

405 (ii) any substitute for a tobacco product, including flavoring or additives to tobacco; or

406 (c) tobacco paraphernalia, as that term is defined in Section [76-10-104.1](#).

407 [~~10~~] (13) "Tobacco retailer" means a person that is required to obtain a tax  
408 commission license.

409 Section 8. Section [26-62-201](#) is amended to read:

410 **[26-62-201. Permitting requirement.](#)**

411 (1) (a) Beginning July 1, 2018, a tobacco retailer shall hold a valid tobacco retail  
412 permit issued in accordance with this chapter by the local health department with jurisdiction  
413 over the physical location where the tobacco retailer operates.

414 (b) A tobacco retailer without a valid permit may not:

415 (i) place [~~tobacco products~~] a tobacco product, an electronic cigarette product, an  
416 alternative nicotine product, or a nontherapeutic nicotine product in public view;

417 (ii) display any advertisement related to [~~tobacco products~~] a tobacco product, an  
418 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine  
419 product that promotes the sale, distribution, or use of those products; or

420 (iii) sell, offer for sale, or offer to exchange for any form of consideration, tobacco [~~or~~],  
421 a tobacco [~~products~~] product, an electronic cigarette product, an alternative nicotine product, or  
422 a nontherapeutic nicotine product.

423 (2) A local health department may issue a permit under this chapter for a tobacco  
424 retailer in the classification of:

425 (a) a general tobacco retailer; or

426 (b) a retail tobacco specialty business.

427 (3) A permit under this chapter is:

428 (a) valid only for one physical location, including a vending machine;

429 (b) valid only at one fixed business address; and  
430 (c) if multiple tobacco retailers are at the same address, separately required for each  
431 tobacco retailer.

432 (4) Notwithstanding the requirement in Subsection (1), a person that holds a tax  
433 commission license that was valid on July 1, 2018:

434 (a) may operate without a permit under this chapter until December 31, 2018; and

435 (b) shall obtain a permit from a local health department under this chapter before  
436 January 1, 2019.

437 Section 9. Section **26-62-202** is amended to read:

438 **26-62-202. Permit application.**

439 (1) A local health department shall issue a permit under this chapter for a tobacco  
440 retailer if the local health department determines that the applicant:

441 (a) accurately provided all information required under Subsection (3) and, if applicable,  
442 Subsection (4); and

443 (b) meets all requirements for a permit under this chapter.

444 (2) An applicant for a permit shall:

445 (a) submit an application described in Subsection (3) to the local health department  
446 with jurisdiction over the area where the tobacco retailer is located; and

447 (b) pay all applicable fees described in Section [26-62-203](#).

448 (3) The application for a permit shall include:

449 (a) the name, address, and telephone number of each proprietor;

450 (b) the name and mailing address of each proprietor authorized to receive  
451 permit-related communication and notices;

452 (c) the business name, address, and telephone number of the single, fixed location for  
453 which a permit is sought;

454 (d) evidence that the location for which a permit is sought has a valid tax commission  
455 license;

456 (e) information regarding whether, in the past 24 months, any proprietor of the tobacco  
457 retailer has been determined to have violated, or has been a proprietor at a location that has  
458 been determined to have violated:

459 (i) a provision of this chapter;

460 (ii) Chapter 38, Utah Indoor Clean Air Act;

461 (iii) Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical

462 Solvents;

463 (iv) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

464 (v) regulations restricting the sale and distribution of cigarettes and smokeless tobacco

465 issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or

466 (vi) any other provision of state law or local ordinance regarding the sale, marketing, or

467 distribution of a tobacco [products] product, an electronic cigarette product, an alternative

468 nicotine product, or a nontherapeutic nicotine product; and

469 (f) the dates of all violations disclosed under this Subsection (3).

470 (4) (a) In addition to the information described in Subsection (3), an applicant for a

471 retail tobacco specialty business permit shall include evidence showing whether the business is

472 located within:

473 (i) 1,000 feet of a community location;

474 (ii) 600 feet of another retail tobacco specialty business; or

475 (iii) 600 feet of property used or zoned for agricultural or residential use.

476 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in

477 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest

478 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard

479 to intervening structures or zoning districts.

480 (5) The department or a local health department may not deny a permit to a retail

481 tobacco specialty business under Subsection (4) if the person obtained a license to operate the

482 retail tobacco specialty business before December 31, 2015, from:

483 (a) a municipality under Section [10-8-41.6](#); or

484 (b) a county under Section [17-50-333](#).

485 (6) (a) The department shall establish by rule made in accordance with Title 63G,

486 Chapter 3, Utah Administrative Rulemaking Act, a permit process for local health departments

487 in accordance with this chapter.

488 (b) The permit process established by the department under Subsection (6)(a) may not

489 require any information in an application that is not required by this section.

490 Section 10. Section **26-62-206** is enacted to read:

491 26-62-206. Requirements for the sale of a tobacco product, an electronic cigarette  
492 product, and other nicotine products.

493 (1) A tobacco retailer shall:

494 (a) for each sale of a tobacco product, an electronic cigarette product, an alternative  
495 nicotine product, or a nontherapeutic nicotine product, provide the customer with an itemized  
496 receipt that separately identifies:

497 (i) the name of the tobacco product, the electronic cigarette product, the alternative  
498 nicotine product, or the nontherapeutic nicotine product;

499 (ii) the amount charged for each tobacco product, electronic cigarette product,  
500 alternative nicotine product, or nontherapeutic nicotine product; and

501 (iii) the time and date of the sale; and

502 (b) maintain an itemized transaction log for each sale of a tobacco product, an  
503 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine  
504 product that separately identifies:

505 (i) the name of the tobacco product, the electronic cigarette product, the alternative  
506 nicotine product, or the nontherapeutic nicotine product;

507 (ii) the amount charged for the tobacco product, the electronic cigarette product, the  
508 alternative nicotine product, or the nontherapeutic nicotine product; and

509 (iii) the date and time of the sale.

510 (2) The itemized transaction log described in Subsection (1)(b) shall be:

511 (a) maintained for at least one year from the date of each transaction in the itemized  
512 transaction log; and

513 (b) made available to an enforcing agency or peace officer at the request of the  
514 enforcing agency or peace officer.

515 Section 11. Section **26-62-301** is amended to read:

516 **26-62-301. Permit violation.**

517 A person is in violation of the permit issued under this chapter if the person violates:

518 (1) a provision of this chapter;

519 (2) a provision of licensing laws under Section [10-8-41.6](#) or Section [17-50-333](#);

520 (3) a provision of Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic  
521 Chemical Solvents;

- 522 (4) a provision of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- 523 (5) a regulation restricting the sale and distribution of cigarettes and smokeless tobacco
- 524 issued by the United States Food and Drug Administration under 21 C.F.R. Part 1140; or
- 525 (6) any other provision of state law or local ordinance regarding the sale, marketing, or
- 526 distribution of a tobacco [products] product, an electronic cigarette product, an alternative
- 527 nicotine product, or a nontherapeutic nicotine product.

528 Section 12. Section **26-62-304** is amended to read:

529 **26-62-304. Hearing -- Evidence of criminal conviction.**

530 (1) At a civil hearing conducted under Section **26-62-302**, evidence of the final

531 criminal conviction of a tobacco retailer or employee for violation of Section **76-10-104** at the

532 same location and within the same time period as the location and time period alleged in the

533 civil hearing for violation of this chapter for sale of [~~tobacco products~~] a tobacco product, an

534 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine

535 product to a person under the age of 19 is prima facie evidence of a violation of this chapter.

536 (2) If the tobacco retailer is convicted of violating Section **76-10-104**, the enforcing

537 agency:

538 (a) may not assess an additional monetary penalty under this chapter for the same

539 offense for which the conviction was obtained; and

540 (b) may revoke or suspend a permit in accordance with Section **26-62-305**.

541 Section 13. Section **26-62-305** is amended to read:

542 **26-62-305. Penalties.**

543 (1) (a) If, following an inspection by an enforcing agency, or an investigation or

544 issuance of a citation or information under Section **77-39-101**, an enforcing agency determines

545 that a person has violated the terms of a permit issued under this chapter, the enforcing agency

546 may impose the penalties described in this section.

547 (b) If multiple violations are found in a single inspection or investigation, only one

548 violation shall count toward the penalties described in this section.

549 (2) (a) The administrative penalty for a first violation at a retail location is a penalty of

550 not more than \$500.

551 (b) The administrative penalty for a second violation at the same retail location that

552 occurs within one year of a previous violation is a penalty of not more than \$750.

553 (c) The administrative penalty for a third or subsequent violation at the same retail  
554 location that occurs within two years after two or more previous violations is:

555 (i) a suspension of the retail tobacco business permit for 30 consecutive business days  
556 within 60 days after the day on which the third or subsequent violation occurs; or

557 (ii) a penalty of not more than \$1,000.

558 (3) The department or a local health department may:

559 (a) revoke a permit if a fourth violation occurs within two years of three previous  
560 violations;

561 (b) in addition to a monetary penalty imposed under Subsection (2), suspend the permit  
562 if the violation is due to a sale of [~~tobacco products~~] a tobacco product, an electronic cigarette  
563 product, an alternative nicotine product, or a nontherapeutic nicotine product to a person under  
564 19 years of age; and

565 (c) if applicable, recommend to a municipality or county that a retail tobacco specialty  
566 business license issued under Section 10-8-41.6 or 17-50-333 be suspended or revoked.

567 (4) (a) Except when a transfer described in Subsection (5) occurs, a local health  
568 department may not issue a permit to:

569 (i) a tobacco retailer for whom a permit is suspended or revoked under Subsection (3);  
570 or

571 (ii) a tobacco retailer that has the same proprietor, director, corporate officer, partner,  
572 or other holder of significant interest as another tobacco retailer for whom a permit is  
573 suspended or revoked under Subsection (3).

574 (b) A person whose permit:

575 (i) is suspended under this section may not apply for a new permit for any other  
576 tobacco retailer for a period of 12 months after the day on which an enforcing agency suspends  
577 the permit; and

578 (ii) is revoked may not apply for a new permit for any tobacco retailer for a period of  
579 24 months after the day on which an enforcing agency revokes the permit.

580 (5) Violations of this chapter, Section 10-8-41.6, or Section 17-50-333 that occur at a  
581 tobacco retailer location shall stay on the record for that tobacco retailer location unless:

582 (a) the tobacco retailer is transferred to a new proprietor; and

583 (b) the new proprietor provides documentation to the local health department that the

584 new proprietor is acquiring the tobacco retailer in an arm's length transaction from the previous  
585 proprietor.

586 Section 14. Section **26-62-306** is amended to read:

587 **26-62-306. Recognition of tobacco retailer training program.**

588 (1) In determining the amount of the monetary penalty to be imposed for an employee's  
589 violation of this chapter, a hearing officer shall reduce the civil penalty by at least 50% if the  
590 hearing officer determines that:

591 (a) the tobacco retailer has implemented a documented employee training program; and

592 (b) the employees have completed that training program within 30 days after the day on  
593 which each employee commences the duties of selling [~~tobacco products~~] a tobacco product, an  
594 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine  
595 product.

596 (2) (a) For the first offense at a location, if the hearing officer determines under  
597 Subsection (1) that the tobacco retailer licensee has not implemented a documented training  
598 program with a written curriculum for employees at that location regarding compliance with  
599 this chapter, the hearing officer may suspend all or a portion of the penalty if:

600 (i) the tobacco retailer agrees to initiate a training program for employees at that  
601 location; and

602 (ii) the training program begins within 30 days after the hearing officer makes a  
603 determination under this Subsection (2)(a).

604 (b) If the hearing officer determines at a subsequent hearing that the tobacco retailer  
605 has not implemented the training program within the time period required under Subsection  
606 (2)(a)(ii), the hearing officer shall promptly impose the suspended monetary penalty, unless the  
607 tobacco retailer demonstrates good cause for an extension of time for implementation of the  
608 training program.

609 Section 15. Section **26A-1-128** is amended to read:

610 **26A-1-128. Tobacco, electronic cigarette, and other nicotine product permits --**  
611 **Enforcement.**

612 A local health department:

613 (1) shall enforce the requirements of Title 26, Chapter 62, Tobacco, Electronic  
614 Cigarette, and Other Nicotine Product Retail Permit;

615 (2) may enforce licensing requirements for entities that hold a business license to sell a  
 616 tobacco ~~[products]~~ product, an electronic cigarette product, an alternative nicotine product, or a  
 617 nontherapeutic nicotine product under Section 10-8-41.6 or ~~[Section]~~ 17-50-333; and

618 (3) may recommend to a municipality or county that the business license of a retail  
 619 tobacco specialty business be suspended or revoked for a violation of Section 10-8-41.6,  
 620 Section 17-50-333, or Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine  
 621 Product Retail Permit.

622 Section 16. Section 59-14-102 is amended to read:

623 **59-14-102. Definitions.**

624 As used in this chapter:

625 (1) (a) Except as provided in Subsection (1)(c), "alternative nicotine product" means a  
 626 product, other than a cigarette, a counterfeit cigarette, an electronic cigarette product, a  
 627 nontherapeutic nicotine product, or a tobacco product, that:

628 (i) contains nicotine;

629 (ii) is intended for human consumption;

630 (iii) is not purchased with a prescription from a licensed physician; and

631 (iv) is not approved by the United States Food and Drug Administration as nicotine  
 632 replacement therapy.

633 (b) "Alternative nicotine product" includes:

634 (i) pure nicotine;

635 (ii) snortable nicotine;

636 (iii) dissolvable orbs, pellets, sticks, or strips; and

637 (iv) nicotine-laced food and beverage.

638 (c) "Alternative nicotine product" does not include a fruit, a vegetable, or a tea that  
 639 contains naturally occurring nicotine.

640 ~~[(+)]~~ (2) "Cigarette" means a roll for smoking made wholly or in part of tobacco:

641 (a) regardless of:

642 (i) the size of the roll;

643 (ii) the shape of the roll; or

644 (iii) whether the tobacco is ~~[(A)]~~ flavored ~~[(B)]~~, adulterated ~~[(C)]~~, or ~~[(C)]~~ mixed with  
 645 any other ingredient; and

646 (b) if the wrapper or cover of the roll is made of paper or any other substance or  
647 material except tobacco.

648 ~~[(2)]~~ (3) "Cigarette rolling machine" means a device or machine that has the capability  
649 to produce at least 150 cigarettes in less than 30 minutes.

650 ~~[(3)]~~ (4) "Cigarette rolling machine operator" means a person ~~[who]~~ that:

651 (a) (i) controls, leases, owns, possesses, or otherwise has available for use a cigarette  
652 rolling machine; and

653 (ii) makes the cigarette rolling machine available for use by another person to produce  
654 a cigarette; or

655 (b) offers for sale, at retail, a cigarette produced from the cigarette rolling machine.

656 ~~[(4)]~~ (5) "Consumer" means a person that is not required:

657 (a) under Section 59-14-201 to obtain a license under Section 59-14-202; ~~[or]~~

658 (b) under Section 59-14-301 to obtain a license under Section 59-14-202~~[:];~~ or

659 (c) under Section 59-14-803 to obtain a license.

660 ~~[(5)]~~ (6) "Counterfeit cigarette" means:

661 (a) a cigarette that has a false manufacturing label; or

662 (b) a package of cigarettes bearing a counterfeit tax stamp.

663 (7) (a) "Electronic cigarette" means:

664 (i) an electronic device used to deliver or capable of delivering vapor containing  
665 nicotine or another substance to an individual's respiratory system;

666 (ii) a component of the device described in Subsection (7)(a)(i); or

667 (iii) an accessory sold in the same package as the device described in Subsection  
668 (7)(a)(i).

669 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section  
670 26-38-2.

671 (8) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette  
672 substance, or a prefilled electronic cigarette.

673 (9) "Electronic cigarette substance" means any substance, including liquid containing  
674 nicotine, used or intended for use in an electronic cigarette.

675 ~~[(6)]~~ (10) "Importer" means a person ~~[who]~~ that imports into the United States, either  
676 directly or indirectly, a finished cigarette for sale or distribution.

677           ~~[(7)]~~ (11) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity,  
 678 or any other person doing business as a distributor or retailer of cigarettes on tribal lands  
 679 located in the state.

680           ~~[(8)]~~ (12) "Little cigar" means a roll for smoking that:

- 681           (a) is made wholly or in part of tobacco;
- 682           (b) ~~[that]~~ uses an integrated cellulose acetate filter or other similar filter; and
- 683           (c) ~~[that]~~ is wrapped in a substance:
  - 684           (i) containing tobacco; and
  - 685           (ii) that is not exclusively natural leaf tobacco.

686           ~~[(9)]~~ (13) (a) Except as provided in Subsection ~~[(9)]~~ (13)(b), "manufacturer" means a  
 687 person ~~[who]~~ that:

- 688           (i) manufactures, fabricates, assembles, processes, or labels a finished cigarette; or
- 689           (ii) makes, modifies, mixes, manufactures, fabricates, assembles, processes, labels,  
 690 repackages, relabels, or imports an electronic cigarette product, an alternative nicotine product,  
 691 or a nontherapeutic nicotine product.

692           (b) "Manufacturer" does not include a cigarette rolling machine operator.

693           ~~[(10)]~~ (14) "Moist snuff" means tobacco that:

- 694           (a) is finely~~[-(i)]~~ cut~~[-(ii)]~~, ground~~[-(iii)]~~, or ~~[(iii)]~~ powdered;
- 695           (b) has at least 45% moisture content, as determined by the commission by rule made  
 696 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 697           (c) is not intended to be:
  - 698           (i) smoked; or
  - 699           (ii) placed in the nasal cavity; and
- 700           (d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or  
 701 distributed in single-use units, including:
  - 702           (i) tablets;
  - 703           (ii) lozenges;
  - 704           (iii) strips;
  - 705           (iv) sticks; or
  - 706           (v) packages containing multiple single-use units.

707           (15) "Nicotine" means a poisonous, nitrogen containing chemical that is made

708 synthetically or derived from tobacco or other plants.

709 (16) (a) "Nontherapeutic nicotine device" means a device that:

710 (i) has a pressurized canister that is used to administer nicotine to the user through  
711 inhalation or intranasally;

712 (ii) is not purchased with a prescription from a licensed physician; and

713 (iii) is not approved by the United States Food and Drug Administration as nicotine  
714 replacement therapy.

715 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or  
716 nontherapeutic nicotine nasal spray.

717 (17) "Nontherapeutic nicotine device substance" means a cartridge that:

718 (a) contains nicotine;

719 (b) is used or intended to be used in a nontherapeutic nicotine device;

720 (c) is not purchased with a prescription from a licensed physician; and

721 (d) is not approved by the United States Food and Drug Administration as nicotine  
722 replacement therapy.

723 (18) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device, a  
724 nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.

725 (19) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled  
726 with an electronic cigarette substance.

727 (20) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine device  
728 that is sold prefilled with a nontherapeutic nicotine device substance.

729 ~~[(11)]~~ (21) "Retailer" means a person that:

730 (a) sells or distributes a cigarette, an electronic cigarette product, an alternative nicotine  
731 product, or a nontherapeutic nicotine product to a consumer in the state; or

732 (b) intends to sell or distribute a cigarette, an electronic cigarette product, an alternative  
733 nicotine product, or a nontherapeutic nicotine product to a consumer in the state.

734 ~~[(12)]~~ (22) "Stamp" means the indicia required to be placed on a cigarette package that  
735 evidences payment of the tax on cigarettes required by Section [59-14-205](#).

736 ~~[(13)]~~ (23) (a) "Tobacco product" means a product made of, or containing, tobacco.

737 (b) "Tobacco product" includes:

738 (i) a cigarette produced from a cigarette rolling machine;

739 (ii) a little cigar; or

740 (iii) moist snuff.

741 (c) "Tobacco product" does not include a cigarette.

742 ~~[(14)]~~ (24) "Tribal lands" means land held by the United States in trust for a federally  
743 recognized Indian tribe.

744 Section 17. Section **59-14-201** is amended to read:

745 **59-14-201. License -- Application of part -- Fee -- Bond -- Exceptions.**

746 (1) It is unlawful for any person in this state to manufacture, import, distribute, barter,  
747 sell, exchange, or offer cigarettes for sale without first having obtained a license issued by the  
748 commission under Section **59-14-202**.

749 (2) Except for the tax rates described in Subsection **59-14-204(2)**, this part does not  
750 apply to a cigarette produced from a cigarette rolling machine.

751 (3) (a) A license may not be issued for the sale of cigarettes until the applicant has paid  
752 a license fee of \$30 or a license renewal fee of \$20, as appropriate.

753 (b) The fee for reinstatement of a license that has been revoked, suspended, or allowed  
754 to expire is \$30.

755 (c) Notwithstanding Subsections (3)(a) and (b), the commission may not charge a fee  
756 for a license under this section for a retailer, as defined in Section **59-14-102**.

757 (4) (a) (i) ~~[A license may not be issued]~~ The commission may not issue a license until  
758 the applicant files a bond with the commission.

759 (ii) The commission shall determine the form and the amount of the bond, the  
760 minimum amount of which shall be \$500.

761 (iii) The ~~[bond shall be executed by the applicant]~~ applicant shall execute the bond as  
762 principal, with a corporate surety, payable to the state and conditioned upon the faithful  
763 performance of all the requirements of this chapter, including the payment of all taxes,  
764 penalties, and other obligations.

765 (b) An applicant is not required to post a bond if the applicant:

766 (i) purchases during the license year only products that have the proper state stamp  
767 affixed as required by this chapter; and

768 (ii) files an affidavit with the applicant's application attesting to this fact.

769 Section 18. Section **59-14-801** is amended to read:

770 **Part 8. Electronic Cigarette and Other Nicotine Product Licensing and Taxation Act**771 **59-14-801. Title.**

772 This part is known as the "Electronic Cigarette and Other Nicotine Product Licensing  
773 and Taxation Act."

774 Section 19. Section **59-14-802** is amended to read:

775 **59-14-802. Definitions.**

776 As used in this part:

777 [~~(1) "Cigarette" means the same as that term is defined in Section 59-14-102.;~~]

778 [~~(2) (a) "Electronic cigarette" means:~~]

779 [~~(i) an electronic device used to deliver or capable of delivering vapor containing~~  
780 ~~nicotine to an individual's respiratory system;]~~

781 [~~(ii) a component of the device described in Subsection (2)(a)(i); or]~~

782 [~~(iii) an accessory sold in the same package as the device described in Subsection~~  
783 ~~(2)(a)(i).]~~

784 [~~(b) "Electronic cigarette" includes an e-cigarette as defined in Section 26-38-2.;~~]

785 [~~(3) "Electronic cigarette product" means an electronic cigarette or an electronic~~  
786 ~~cigarette substance.]~~

787 [~~(4) "Electronic cigarette substance" means any substance, including liquid containing~~  
788 ~~nicotine, used or intended for use in an electronic cigarette.]~~

789 [~~(5) "Enforcing agency" means the Department of Health, a county health department,~~  
790 ~~or a local health department, when enforcing.]~~

791 [~~(a) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or]~~

792 [~~(b) Title 26, Chapter 57, Electronic Cigarette Regulation Act.]~~

793 [~~(6)] (1) "Licensee" means a person that holds a valid license to sell an electronic  
794 cigarette [products] product, an alternative nicotine product, or a nontherapeutic nicotine  
795 product.~~

796 [~~(7) "License to sell an electronic cigarette product" means a license issued by the~~  
797 ~~commission under Subsection 59-14-803(3).]~~

798 (2) (a) "Manufacturer's sales price" means the amount the manufacturer of an electronic  
799 cigarette substance, prefilled electronic cigarette, alternative nicotine product, nontherapeutic  
800 nicotine device substance, or prefilled nontherapeutic nicotine device charges after subtracting

801 a discount.

802 (b) "Manufacturer's sales price" includes an original Utah destination freight charge,  
803 regardless of:

804 (i) whether the electronic cigarette substance, prefilled electronic cigarette, alternative  
805 nicotine product, nontherapeutic nicotine device substance, or prefilled nontherapeutic nicotine  
806 device is shipped f.o.b. origin or f.o.b. destination; or

807 (ii) who pays the original Utah destination charge.

808 Section 20. Section **59-14-803** is amended to read:

809 **59-14-803. License to sell an electronic cigarette product or other nicotine**  
810 **products.**

811 (1) [~~Except as provided in Subsection (2), a~~] A person may not sell, offer to sell, or  
812 distribute an electronic cigarette product [~~in Utah~~], an alternative nicotine product, or a  
813 nontherapeutic nicotine product in this state without first:

814 (a) except as provided in Subsection (2), obtaining a license from the commission  
815 under this section to sell an electronic cigarette product [~~from the commission under this~~  
816 section.], an alternative nicotine product, or a nontherapeutic nicotine product; and

817 (b) complying with any bonding requirement described in Subsection (4).

818 (2) A person that holds a valid license to sell cigarettes under Section **59-14-201**[;] or a  
819 person that holds a valid license to sell tobacco products under Section **59-14-301**[;] may,  
820 without obtaining a separate license [~~to sell an electronic cigarette product under this part~~] in  
821 accordance with this section, sell, offer to sell, or distribute in the state the following:

822 (a) an electronic cigarette product [~~in Utah in accordance with this part.~~];

823 (b) an alternative nicotine product; or

824 (c) a nontherapeutic nicotine product.

825 (3) The commission shall issue a license to sell an electronic cigarette product, an  
826 alternative nicotine product, or a nontherapeutic nicotine product to a person that submits an  
827 application, on a form created by the commission, that includes:

828 (a) the person's name;

829 (b) the address of the facility where the person will sell an electronic cigarette product,  
830 an alternative nicotine product, or a nontherapeutic nicotine product; and

831 (c) any other information the commission requires to implement this chapter.

832 (4) A license described in Subsection (3) is:

833 (a) valid only at one fixed business address;

834 (b) valid for three years;

835 (c) valid only for a physical location; and

836 (d) renewable if a licensee meets the criteria for licensing described in Subsection (3).

837 (5) (a) The commission shall require a manufacturer, jobber, distributor, wholesaler, or

838 retailer that is responsible under this part for the collection of tax on an electronic cigarette

839 substance, a prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic

840 nicotine device substance, or a prefilled nontherapeutic nicotine device to post a bond.

841 (b) The manufacturer, jobber, distributor, wholesaler, or retailer may post the bond

842 required by Subsection (5)(a) in combination with the bond required by Section [59-14-201](#) or

843 [59-14-301](#).

844 (c) Subject to Subsection (5)(d), the commission shall determine the form and amount

845 of the bond.

846 (d) The minimum amount of the bond shall be:

847 (i) except as provided in Subsection (5)(d)(ii) or (iii), \$500;

848 (ii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond

849 required by Subsection (5)(a) in combination with a bond required by either Section [59-14-201](#)

850 or [59-14-301](#), \$1,000; or

851 (iii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond

852 required by Subsection (5)(a) in combination with the bonds required by both Sections

853 [59-14-201](#) and [59-14-301](#), \$1,500.

854 ~~[(5)]~~ (6) The commission may make rules in accordance with Title 63G, Chapter 3,

855 Utah Administrative Rulemaking Act, to establish the additional information described in

856 Subsection (3)(c) that a person must provide in the application described in Subsection (3).

857 ~~[(6)]~~ (7) It is a class B misdemeanor for a person to violate Subsection (1).

858 ~~[(7)]~~ (8) The commission may not charge a fee for a license under this section.

859 Section 21. Section **59-14-804** is enacted to read:

860 **59-14-804. Taxation of an electronic cigarette substance, prefilled electronic**

861 **cigarette, an alternative nicotine product, a nontherapeutic nicotine product, a**

862 **nontherapeutic device substance, and a prefilled nontherapeutic nicotine device.**

863 (1) (a) There is levied a tax upon the following:

864 (i) an electronic cigarette substance; and

865 (ii) a prefilled electronic cigarette.

866 (b) Beginning on July 1, 2020, there is levied a tax upon the following:

867 (i) an alternative nicotine product;

868 (ii) a nontherapeutic nicotine device substance; or

869 (iii) a prefilled nontherapeutic nicotine device.

870 (2) The rate of tax levied under Subsection (1) is .86 multiplied by the manufacturer's

871 sales price.

872 (3) (a) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user shall

873 pay the tax levied under Subsection (1) at the time that an electronic cigarette substance, a

874 prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device

875 substance, or a prefilled nontherapeutic nicotine device is first received in the state.

876 (b) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user may not

877 resell an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine

878 product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine

879 device to another distributor, another retailer, or a consumer before paying the tax levied under

880 Subsection (1).

881 (4) (a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user

882 shall remit the taxes collected in accordance with this section to the commission.

883 (b) The commission shall deposit, for each fiscal year:

884 (i) the first \$2,000,000 remitted in accordance with this section into the Electronic

885 Cigarette Substance and Other Nicotine Product Tax Restricted Account, created in Section

886 [59-14-807](#); and

887 (ii) the balance of remittances received in accordance with this section into the General

888 Fund.

889 Section 22. Section **59-14-805** is enacted to read:

890 **59-14-805. Remittance of tax -- Returns -- Invoice required -- Filing requirement--**

891 **Exception -- Penalty -- Overpayment.**

892 (1) (a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user

893 that collects the tax imposed on an electronic cigarette substance, a prefilled electronic

894 cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, or a  
895 prefilled nontherapeutic nicotine device shall remit to the commission, in an electronic format  
896 approved by the commission:

897 (i) the tax collected in the previous calendar quarter; and

898 (ii) the quarterly tax return.

899 (b) The tax collected and the return are due on or before the last day of April, July,  
900 October, and January.

901 (2) (a) A manufacturer, jobber, distributor, wholesaler, retailer, or any other person  
902 selling an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine  
903 product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine  
904 device to a person other than the ultimate consumer shall furnish the purchaser with an  
905 itemized invoice showing:

906 (i) the seller's name and address;

907 (ii) the name and address of the purchaser;

908 (iii) the date of sale;

909 (iv) the name and price of the product; and

910 (v) the discount, if any.

911 (b) The invoice shall show whether the price includes the tax.

912 (c) The seller and the purchaser shall retain copies of the invoice and make the invoice  
913 available for inspection at the request of the commission or the commission's agent for a period  
914 of three years following the sale.

915 (3) (a) A consumer that purchases an untaxed electronic cigarette substance, prefilled  
916 electronic cigarette, alternative nicotine product, nontherapeutic nicotine device substance, or  
917 prefilled nontherapeutic nicotine device for use or other consumption shall:

918 (i) file with the commission, on forms prescribed by the commission, a statement  
919 showing the quantity and description of the item subject to tax under this part; and

920 (ii) pay the tax imposed by this part on that item.

921 (b) The consumer shall file the statement described in Subsection (3)(a) and pay the tax  
922 due on or before the last day of the month immediately following the month during which the  
923 consumer purchased an untaxed electronic cigarette substance, prefilled electronic cigarette,  
924 alternative nicotine device substance, nontherapeutic nicotine product, or prefilled

925 nontherapeutic nicotine device.

926 (c) A consumer shall maintain records necessary to determine the amount of tax the  
927 consumer is liable to pay under this part for a period of three years following the date the  
928 statement required by this section was filed.

929 (4) A tourist who imports an electronic cigarette substance, a prefilled electronic  
930 cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, or a  
931 prefilled nontherapeutic nicotine device into the state does not need to file the statement  
932 described in Subsection (3) or pay the tax if the item is for the tourist's own use or consumption  
933 while in this state.

934 (5) In addition to the tax required by this part, a person shall pay a penalty as provided  
935 in Section 59-1-401, plus interest at the rate and in the manner prescribed in Section 59-1-402,  
936 if a person subject to this section fails to:

- 937 (a) pay the tax prescribed by this part;
- 938 (b) pay the tax on time; or
- 939 (c) file a return required by this part.

940 (6) An overpayment of a tax imposed by this part shall accrue interest at the rate and in  
941 the manner prescribed in Section 59-1-402.

942 Section 23. Section 59-14-806 is enacted to read:

943 **59-14-806. Refund of taxes paid -- Exemption for exported electronic cigarettes**  
944 **and other nicotine products.**

945 (1) When an electronic cigarette substance, a prefilled electronic cigarette, an  
946 alternative nicotine product, a nontherapeutic nicotine device substance, or a prefilled  
947 nontherapeutic nicotine device taxed under this chapter is sold and shipped to a regular dealer  
948 in those articles in another state, the seller in this state shall be entitled to a refund of the actual  
949 amount of the taxes paid, upon condition that the seller in this state:

- 950 (a) is a licensed dealer;
- 951 (b) signs an affidavit that the electronic cigarette substance, the prefilled electronic  
952 cigarette, the alternative nicotine product, the nontherapeutic nicotine device substance, or the  
953 prefilled nontherapeutic nicotine device was sold and shipped to a regular dealer in those  
954 articles in another state;

955 (c) furnishes from the purchaser a written acknowledgment that the purchaser has

956 received the electronic cigarette substance, the prefilled electronic cigarette, the alternative  
957 nicotine product, the nontherapeutic nicotine device substance, or the prefilled nontherapeutic  
958 nicotine device; and

959 (d) reports the name and address of the purchaser.

960 (2) A wholesaler or distributor in this state that exports an electronic cigarette  
961 substance, a prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic  
962 nicotine device substance, or a prefilled nontherapeutic nicotine device to a regular dealer in  
963 those articles in another state shall be exempt from the payment of any tax under this chapter  
964 upon furnishing proof of the sale and exportation as the commission may require.

965 Section 24. Section **59-14-807** is enacted to read:

966 **59-14-807. Electronic Cigarette Substance and Other Nicotine Product Tax**  
967 **Restricted Account.**

968 (1) There is created within the General Fund a restricted account known as the  
969 "Electronic Cigarette Substance and Other Nicotine Product Tax Restricted Account."

970 (2) The Electronic Cigarette Substance and Other Nicotine Product Tax Restricted  
971 Account consists of:

972 (a) for each fiscal year, the first \$2,000,000 collected from the tax imposed by Section  
973 59-14-804; and

974 (b) amounts appropriated by the Legislature.

975 (3) (a) For each fiscal year, beginning with fiscal year 2020, and subject to  
976 appropriation by the Legislature, the Division of Finance shall distribute money from the  
977 Electronic Cigarette Substance and Other Nicotine Product Tax Restricted Account to the local  
978 health departments as directed by the Department of Health, which shall determine the  
979 allocation for each local health department using the formula created in accordance with  
980 Section 26A-1-116.

981 (b) The local health departments shall use the money received in accordance with  
982 Subsection (3)(a) for:

983 (i) the development and implementation of evidence-based tobacco, electronic  
984 cigarette, and other nicotine product cessation programs for individuals under the age of 19;

985 (ii) enforcing:

986 (A) the regulation provisions described in Section 26-57-103;

987 (B) the labeling requirement described in Section 26-57-104; and  
988 (C) the penalty provisions described in Section 26-62-305; and  
989 (iii) developing and providing tobacco, electronic cigarette, and other nicotine product  
990 use prevention education to individuals under the age of 19.

991 Section 25. Section 76-10-101 is amended to read:

992 **Part 1. Cigarettes, Tobacco, Other Nicotine Substances, and Psychotoxic Chemical**  
993 **Substances**

994 **76-10-101. Definitions.**

995 As used in this part:

996 (1) "Alternative nicotine product" means the same as that term is defined in Section  
997 59-14-102.

998 (2) "Cigar" means a product that contains nicotine, is intended to be burned under  
999 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in  
1000 any substance containing tobacco, other than any roll of tobacco that is a cigarette as described  
1001 in Subsection [(2)] (3).

1002 [(2)] (3) "Cigarette" means a product that contains nicotine, is intended to be burned  
1003 under ordinary conditions of use, and consists of:

1004 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

1005 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of  
1006 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to  
1007 be offered to, or purchased by, consumers as a cigarette described in Subsection [(2)] (3)(a).

1008 [(3) "Electronic cigarette" means an electronic cigarette product, as defined in Section  
1009 59-14-802.]

1010 (4) (a) "Electronic cigarette" means:

1011 (i) an electronic device used to deliver or capable of delivering vapor containing  
1012 nicotine to an individual's respiratory system;

1013 (ii) a component of the device described in Subsection (4)(a)(i); or

1014 (iii) an accessory sold in the same package as the device described in Subsection

1015 (4)(a)(i).

1016 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section

1017 26-38-2.

1018           (5) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette  
1019 substance, or a prefilled electronic cigarette.

1020           (6) "Electronic cigarette substance" means any substance, including liquid containing  
1021 nicotine, used or intended for use in an electronic cigarette.

1022           (7) (a) "Nontherapeutic nicotine device" means a device that:

1023               (i) has a pressurized canister that is used to administer nicotine to the user through  
1024 inhalation or intranasally;

1025               (ii) is not purchased with a prescription from a licensed physician; and

1026               (iii) is not approved by the United States Food and Drug Administration as nicotine  
1027 replacement therapy.

1028           (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or  
1029 nontherapeutic nicotine nasal spray.

1030           (8) "Nontherapeutic nicotine device substance" means a cartridge that:

1031               (a) contains nicotine;

1032               (b) is used or intended to be used in a nontherapeutic nicotine device;

1033               (c) is not purchased with a prescription from a licensed physician; and

1034               (d) is not approved by the United States Food and Drug Administration as nicotine  
1035 replacement therapy.

1036           (9) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device, a  
1037 nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.

1038           ~~(4)~~ (10) "Place of business" includes:

1039               (a) a shop;

1040               (b) a store;

1041               (c) a factory;

1042               (d) a public garage;

1043               (e) an office;

1044               (f) a theater;

1045               (g) a recreation hall;

1046               (h) a dance hall;

1047               (i) a poolroom;

1048               (j) a café;

- 1049 (k) a cafeteria;
- 1050 (l) a cabaret;
- 1051 (m) a restaurant;
- 1052 (n) a hotel;
- 1053 (o) a lodging house;
- 1054 (p) a streetcar;
- 1055 (q) a bus;
- 1056 (r) an interurban or railway passenger coach;
- 1057 (s) a waiting room; and
- 1058 (t) any other place of business.

1059 (11) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled  
 1060 with an electronic cigarette substance.

1061 (12) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine device  
 1062 that is sold prefilled with a nontherapeutic nicotine device substance.

1063 [~~5~~] (13) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other  
 1064 lighted smoking equipment.

1065 Section 26. Section **76-10-104** is amended to read:

1066 **76-10-104. Providing any cigar, cigarette, electronic cigarette, alternative nicotine**  
 1067 **product, nontherapeutic nicotine product, or tobacco to a minor -- Penalties.**

1068 (1) Any person who knowingly, intentionally, recklessly, or with criminal negligence  
 1069 provides any cigar, cigarette, electronic cigarette product, alternative nicotine product,  
 1070 nontherapeutic nicotine product, or tobacco in any form[;] to any person under 19 years of  
 1071 age[;] is guilty of a class C misdemeanor on the first offense, a class B misdemeanor on the  
 1072 second offense, and a class A misdemeanor on subsequent offenses.

1073 (2) For purposes of this section "provides":

1074 (a) includes selling, giving, furnishing, sending, or causing to be sent; and

1075 (b) does not include the acts of the United States Postal Service or other common  
 1076 carrier when engaged in the business of transporting and delivering packages for others or the  
 1077 acts of a person, whether compensated or not, who transports or delivers a package for another  
 1078 person without any reason to know of the package's content.

1079 Section 27. Section **76-10-104.1** is amended to read:

1080 **76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.**

1081 (1) For purposes of this section:

1082 (a) "Provides":

1083 (i) includes selling, giving, furnishing, sending, or causing to be sent; and

1084 (ii) does not include the acts of the United States Postal Service or other common  
1085 carrier when engaged in the business of transporting and delivering packages for others or the  
1086 acts of a person, whether compensated or not, who transports or delivers a package for another  
1087 person without any reason to know of the package's content.1088 (b) (i) "Tobacco paraphernalia"~~[(i)]~~ means any equipment, product, or material of any  
1089 kind which is used, intended for use, or designed for use to package, repackage, store, contain,  
1090 conceal, ingest, inhale, or otherwise introduce a cigar, electronic cigarette substance,  
1091 nontherapeutic nicotine device substance, cigarette, or tobacco in any form into the human  
1092 body~~[, including:]~~.1093 (ii) "Tobacco paraphernalia" includes:1094 (A) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without  
1095 screens, permanent screens, hashish heads, or punctured metal bowls;

1096 (B) water pipes;

1097 (C) carburetion tubes and devices;

1098 (D) smoking and carburetion masks;

1099 (E) roach clips: meaning objects used to hold burning material, such as a cigarette, that  
1100 has become too small or too short to be held in the hand;

1101 (F) chamber pipes;

1102 (G) carburetor pipes;

1103 (H) electric pipes;

1104 (I) air-driven pipes;

1105 (J) chillums;

1106 (K) bongs; and

1107 (L) ice pipes or chillers~~[-and]~~.1108 ~~[(ii)]~~ (iii) "Tobacco paraphernalia" does not include matches or lighters.1109 (2) (a) It is unlawful for a person to knowingly, intentionally, recklessly, or with  
1110 criminal negligence provide any tobacco paraphernalia to any person under 19 years of age.

1111 (b) A person who violates this section is guilty of a class C misdemeanor on the first  
1112 offense and a class B misdemeanor on subsequent offenses.

1113 Section 28. Section **76-10-105** is amended to read:

1114 **76-10-105. Buying or possessing a cigar, a cigarette, an electronic cigarette**  
1115 **product, an alternative nicotine product, a nontherapeutic nicotine product, or tobacco**  
1116 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

1117 (1) Any [~~18-year-old person~~] 18-year-old individual who buys or attempts to buy,  
1118 accepts, or has in the [~~person's~~] individual's possession any cigar, cigarette, electronic cigarette  
1119 product, alternative nicotine product, nontherapeutic nicotine product, or tobacco in any form is  
1120 guilty of a class C misdemeanor and subject to:

1121 (a) a minimum fine or penalty of \$60; and

1122 (b) participation in a court-approved tobacco education program, which may include a  
1123 participation fee.

1124 (2) Any [~~person~~] individual under the age of 18 who buys or attempts to buy, accepts,  
1125 or has in the [~~person's~~] individual's possession any cigar, cigarette, electronic cigarette product,  
1126 alternative nicotine product, nontherapeutic nicotine product, or tobacco in any form is subject  
1127 to the jurisdiction of the juvenile court and subject to Section [78A-6-602](#), unless the violation  
1128 is committed on school property. If a violation under this section is adjudicated under Section  
1129 [78A-6-117](#), the minor may be subject to the following:

1130 (a) a fine or penalty, in accordance with Section [78A-6-117](#); and

1131 (b) participation in a court-approved tobacco education program, which may include a  
1132 participation fee.

1133 (3) A compliance officer appointed by a board of education under Section [53G-4-402](#)  
1134 may not issue a citation for a violation of this section committed on school property. A cited  
1135 violation committed on school property shall be addressed in accordance with Section  
1136 [53G-8-211](#).

1137 Section 29. Section **76-10-105.1** is amended to read:

1138 **76-10-105.1. Requirement of direct, face-to-face sale of a cigarette, tobacco, an**  
1139 **electronic product, an alternative nicotine product, or a nontherapeutic nicotine product**  
1140 **-- Minors not allowed in tobacco specialty shop -- Penalties.**

1141 (1) As used in this section:

- 1142 (a) "Cigarette" means the same as that term is defined in Section 59-14-102.
- 1143 (b) (i) "Face-to-face exchange" means a transaction made in person between an  
1144 individual and a retailer or retailer's employee.
- 1145 (ii) "Face-to-face exchange" does not include a sale through a:
- 1146 (A) vending machine; or
- 1147 (B) self-service display.
- 1148 (c) "Retailer" means a person who:
- 1149 (i) sells a cigarette, tobacco, [or] an electronic cigarette product, an alternative nicotine  
1150 product, or a nontherapeutic nicotine product to an individual for personal consumption; or
- 1151 (ii) operates a facility with a vending machine that sells a cigarette, tobacco, or an  
1152 electronic cigarette.
- 1153 (d) "Self-service display" means a display of a cigarette, tobacco, [or] an electronic  
1154 cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product to which  
1155 the public has access without the intervention of a retailer or retailer's employee.
- 1156 (e) "Tobacco" means any product, except a cigarette, made of or containing tobacco.
- 1157 (f) "Tobacco specialty shop" means a "retail tobacco specialty business" as that term is  
1158 defined:
- 1159 (i) as it relates to a municipality, in Section 10-8-41.6; and
- 1160 (ii) as it relates to a county, in Section 17-50-333.
- 1161 (2) Except as provided in Subsection (3), a retailer may sell a cigarette, tobacco, [or] an  
1162 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine  
1163 product only in a face-to-face exchange.
- 1164 (3) The face-to-face sale requirement in Subsection (2) does not apply to:
- 1165 (a) a mail-order, telephone, or Internet sale made in compliance with Section  
1166 59-14-509;
- 1167 (b) a sale from a vending machine or self-service display that is located in an area of a  
1168 retailer's facility:
- 1169 (i) that is distinct and separate from the rest of the facility; and
- 1170 (ii) where the retailer only allows an individual who complies with Subsection (4) to be  
1171 present; or
- 1172 (c) a sale at a tobacco specialty shop.

1173 (4) An individual who is less than 19 years old may not enter or be present at a tobacco  
1174 specialty shop unless the individual is:

1175 (a) accompanied by a parent or legal guardian;

1176 (b) present at the tobacco shop for a bona fide commercial purpose other than to  
1177 purchase a cigarette, tobacco, [~~or~~] an electronic cigarette product, an alternative nicotine  
1178 product, or a nontherapeutic nicotine product; or

1179 (c) 18 years old or older and an active duty member of the United States Armed Forces,  
1180 as demonstrated by a valid, government-issued military identification card.

1181 (5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual  
1182 into an area described in Subsection (3)(b), or into a tobacco specialty shop, may not allow the  
1183 individual to purchase a cigarette, tobacco, [~~or~~] an electronic cigarette product, an alternative  
1184 nicotine product, or a nontherapeutic nicotine product.

1185 (6) A violation of Subsection (2) or (4) is a:

1186 (a) class C misdemeanor on the first offense;

1187 (b) class B misdemeanor on the second offense; and

1188 (c) class A misdemeanor on the third and all subsequent offenses.

1189 (7) An individual who violates Subsection (5) is guilty of providing tobacco to a minor  
1190 under Section [76-10-104](#).

1191 (8) (a) Any ordinance, regulation, or rule adopted by the governing body of a political  
1192 subdivision of the state or by a state agency that affects the sale, placement, or display of  
1193 [~~cigarettes~~] a cigarette, tobacco, [~~or~~] an electronic [~~cigarettes~~] cigarette product, an alternative  
1194 nicotine product, or a nontherapeutic nicotine product that is not essentially identical to the  
1195 provisions of this section and Section [76-10-102](#) is superseded.

1196 (b) Subsection (8)(a) does not apply to the adoption or enforcement of a land use  
1197 ordinance by a municipal or county government.

1198 Section 30. Section [76-10-111](#) is amended to read:

1199 **[76-10-111. Restrictions on sale of smokeless tobacco or electronic cigarettes --](#)**  
1200 **Exceptions.**

1201 (1) The Legislature finds that:

1202 (a) smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who  
1203 use those products because research indicates that they may cause mouth or oral cancers;

1204 (b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;

1205 (c) the use of electronic cigarettes may lead to unhealthy behavior such as the use of  
1206 tobacco products; and

1207 (d) it is necessary to restrict the gift of the products described in this Subsection (1) in  
1208 the interest of the health of the citizens of this state.

1209 (2) (a) Except as provided in Subsection (3), it is unlawful for a manufacturer,  
1210 wholesaler, and retailer to:

1211 (i) give or distribute without charge any smokeless tobacco, chewing tobacco, or  
1212 electronic cigarette in this state[-];

1213 (ii) sell, offer for sale, or furnish any electronic cigarette at less than 90% of the cost of  
1214 the product to the manufacturer, wholesaler, or retailer; or

1215 (iii) give, distribute, sell, offer for sale, or furnish any electronic cigarette for free or at  
1216 a lower price because the purchaser makes another purchase.

1217 (b) The price that a manufacturer, wholesaler, or retailer may charge under Subsection  
1218 (2)(a)(ii) does not include a discount for:

1219 (i) a physical manufacturer coupon:

1220 (A) that is surrendered to the tobacco retailer at the time of sale; and

1221 (B) for which the manufacturer will reimburse the wholesaler or retailer for the full  
1222 amount of the discount described in the manufacturer coupon and provided to the purchaser;

1223 (ii) a rebate that will be paid to the manufacturer, wholesaler, or retailer for the full  
1224 amount of the rebate provided to the purchaser; or

1225 (iii) a promotional fund that will be paid to the manufacturer, wholesaler, or retailer for  
1226 the full amount of the promotional fund provided to the purchaser.

1227 (c) Any person who violates this section is guilty of a class C misdemeanor for the first  
1228 offense, and is guilty of a class B misdemeanor for any subsequent offense.

1229 (3) [(a)] Smokeless tobacco, chewing tobacco, or an electronic cigarette may be  
1230 distributed to adults without charge at professional conventions where the general public is  
1231 excluded.

1232 [~~(b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives~~  
1233 ~~smokeless tobacco, chewing tobacco, or an electronic cigarette to a person of legal age upon~~  
1234 ~~the person's purchase of another tobacco product or electronic cigarette.]~~

1235 Section 31. **Effective date.**  
1236 This bill takes effect on July 1, 2019.